

FISCAL NOTE

Bill #: SB 487

Title: Revise laws related to wind energy taxation and economic development

Primary Sponsor: Gerald Pease

Status: Introduced

Sponsor signature	Date	Chuck Swysgood, Budget Director	Date
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Fiscal Summary

FY 2004 Difference

FY 2005 Difference

Expenditures:

General Fund

\$0

\$0

Revenue:

General Fund

\$0

\$0

Net Impact on General Fund Balance:

\$0

\$0

- | | |
|---|---|
| <input type="checkbox"/> Significant Local Gov. Impact | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts |
| <input type="checkbox"/> Dedicated Revenue Form Attached | <input type="checkbox"/> Needs to be included in HB 2 |

Fiscal Analysis

ASSUMPTIONS:

1. The proposal removes the limitation that the combined amount of state and federal income tax credit may not exceed 60% of eligible costs; increases the maximum amount of outstanding economic development bonds that may be outstanding; and increases the amount that the Board of Investments may use for financing.
2. The federal investment credit for wind energy was replaced in 1994 with a wind generation production tax equaling 1.5 cents per kilowatt-hour of energy produced.
3. Currently, the state portion of eligible credit is a maximum of 35%, but cannot exceed 60% for both federal and state purposes. Since the federal investment credit was repealed in 1994, the credit limitation of 60% of eligible costs for both state and federal credits is unnecessary.
4. Striking the combined 60% investment credit limit for state and federal purposes will not have any revenue impacts associated with it.
5. The bill increases the amount of financing The Board of Investment can provide to major projects from \$10 million to \$50 million. The Department of Environment Quality (DEQ) does not expect the addition in funding limits to increase the number of wind generating facilities that will be developed in the future. DEQ believes factors other than funding are larger determinants for the development of wind energy facilities.

Fiscal Note Request SB 487, Introduced
(continued)

TECHNICAL NOTES:

Department of Revenue

1. Currently, 15-32-403, MCA, refers to a federal wind energy investment credit under section 48(a) of the Internal Revenue Code (IRC). That section of the IRC was repealed in 1994 without updates to Title 15, MCA. Section 48(a) of the Internal Revenue Code now refers to a 10% credit for investments in solar energy generation, and the distribution of energy derived from geothermal deposits: this section does not include wind energy generation.
2. Currently, 15-32-402 (2), MCA, refers to a section 38(1) of the Internal Revenue Code (IRC) for “eligible costs” that apply to the state wind energy credit. That section of the IRC was repealed in 1983 without updates to Title 15, MCA. Section 38 of the Internal Revenue Code now refers to general business credits, and does not include a definition for “eligible costs”. The department will need to develop a definition of “eligible costs” under 15-32-402 (2), MCA. Section 46(c) of the IRC has a definition for “eligible investments” in regards to qualified investments, which may work in place of “eligible costs”.

Department of Commerce

3. Without knowing more about the project, or the size of the project, and the owner of the project, a determination cannot be made regarding the types of bonds to be issued, i.e. tax-exempt, backed by the capital reserve account, or a moral obligation pledge of the state.
4. Federal IRS regulations limit the types of projects that qualify for tax-exempt financing under the Economic Development Bond Act.
5. In 1986, in *White vs. Hollow*, the Montana Supreme Court held that using state funds to guarantee the credit of a private entity (moral obligation pledge) violated the Montana Constitution.
6. If bonds issued under the Economic Development Bond Act are not secured by the capital reserve account, they are not affected by the limits reflected in SB 487.